

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MASPETH TRADING, INC., DOUBLE GREEN
PRODUCE, INC., FOREST MUSHROOM
FOOD, INC., and NEW SON YENG PRODUCE,
LLC,

ORDER

12-CV-1997 (NGG) (VMS)

Plaintiffs,

-against-

OU JIANG SUPERMARKET, INC. and AN
XING TIAN,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiffs Maspeth Trading, Inc., Double Green Produce, Inc., Forest Mushroom Food, Inc., and New Son Yeng Produce NY, LLC¹ brought this action against Defendants Ou Jiang Supermarket, Inc. (“Ou Jiang”) and An Xing Tian (“Tian”), alleging violations of the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e, et seq. (“PACA”). (Compl. (Dkt. 1).) On May 10, 2012, Plaintiffs effected service on Defendant Ou Jiang by serving the New York Secretary of State with the Summons and Complaint (see Summons Returned Executed (Dkt. 3)), but Ou Jiang failed to answer or otherwise appear in this action. Plaintiffs did not file proof of service on Tian.

On February 20, 2013, Plaintiffs filed a request for a certificate of default (Dkt. 6), which was entered by the Clerk of Court on April 10, 2013 (Dkt. 7). Plaintiffs subsequently moved for default judgment.² (Mot. for Default J. (Dkt. 12).) The court referred this motion to Magistrate

¹ This party is incorrectly named on the docket as New Son Yeng Produce, LLC.

² Plaintiffs initially filed their Motion for Default Judgment on April 25, 2013. (Dkt. 8.) However, Plaintiffs did not subsequently file an affidavit of service and stated that they had no record that the motion papers were served on

Judge Vera M. Scanlon for a Report and Recommendation (“R&R”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Feb. 6, 2014, Order.)

On June 2, 2014, Judge Scanlon issued her R&R, recommending that Plaintiffs’ Motion for Default Judgment be granted and Plaintiffs be awarded \$100,944.50. (R&R (Dkt. 16) at 9.) Of that amount, the R&R recommends that \$61,964.00 be allocated to Maspeth Trading, Inc.; \$13,215.50 be allocated to Double Green Produce, Inc.; \$7,499.00 be allocated to Forest Mushroom Food, Inc.; and \$18,266.00 be allocated to New Son Yeng Produce NY, LLC. (Id.) The R&R also recommends that the court sua sponte dismiss Plaintiffs’ claims against Defendant Tian unless Plaintiffs filed proof of service on this Defendant within ten days of the R&R. (Id.) To date, Plaintiffs have not filed proof of service. A copy of the R&R was filed electronically and mailed to Ou Jiang.

No party has objected to Judge Scanlon’s R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). (See also R&R at 10 (“Written objections to this report and recommendation must be filed within fourteen days of service of the report and recommendation with the Clerk of Court . . . Failure to file objections within the specified time waives the right to appeal any order of judgment entered based on this report and recommendation.”) (citations omitted).) Therefore, the court reviews the R&R for clear error. See Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010); La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); cf. 28 U.S.C. § 636(b)(1). Finding no clear error, the court ADOPTS the R&R in its entirety. See Porter v. Potter, 219 F. App’x 112 (2d Cir. 2007).

Defendant Ou Jiang. (See Pls.’ Status Report (Dkt. 11) at 1.) Therefore Plaintiffs withdrew their motion in order to serve the motion on Ou Jiang and refile it with the court. (Jan. 16, 2014, Order.) Plaintiffs filed their second Motion for Default Judgment on January 31, 2014, and the affidavit of service on May 9, 2014. (Mot. for Default J. (Dkt. 12).)

Accordingly, Plaintiffs' Motion for Default Judgment is GRANTED. Plaintiffs are awarded \$100,944.50 from the PACA trust, allocated as follows: \$61,964.00 is due to Maspeth Trading, Inc.; \$13,215.50 is due to Double Green Produce, Inc.; \$7,499.00 is due to Forest Mushroom Food, Inc.; and \$18,266.00 is due to New Son Yeng Produce NY, LLC. Plaintiffs' claims against Tian are DISMISSED without prejudice. The Clerk of Court is respectfully directed to enter judgment and close the case.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
July 15, 2014

NICHOLAS G. GARAUFIS
United States District Judge